

**Rejection Under 35 U.S.C. § 112:**

The Examiner rejected Claims 2, 4-6, 13 and 15-17 under 35 U.S.C 112, second paragraph for the reasons set forth at Page 2, lines 1-11, incorporated herein by reference thereto. The Examiner noted that the terms “flip up” and “pivotably attached” fail to provide positive structure or means to provide the function. Accordingly, the claims have been amended to include “pivoting means” and “flip means”, whereby a positive structure is now claims to provide the claimed function. It is respectfully submitted that this amendment obviates the rejection under 35 U.S.C. 112, second paragraph. The Examiner is thanked for his comments on the claims.

**Rejection under 35 U.S.C. §102:**

The Examiner rejected Claims 1-5, 7-10, 12-16, 18, 20 and 22-24 under 35 U.S.C. 102(e) as being anticipated by Wai (USP 6,481,338). The claims have been amended to recite the structures of “pivoting means” and ”flip means”, such that each function is now supported by the structure that performs it. The Examiner recites his analysis of Wai as follows”

“There is disclosed in Wai a brew basket for a beverage system, comprising: a brewing chamber 21 having an aperture 41 to allow flow of a brewed beverage; a filter 12 including a replaceable filter medium 19, the filter being pivotably attached, at the pip of the handle, to the brewing chamber, wherein the replaceable filter medium is sealable supported on the annular flange 16 of the filter.” (Page 3, lines 1-5)

As is clear from Wai at column 3, lines 38 to 43, the spoon brewer assembly of Wai is not a brew basket that is pivotably mounted, since the hinge is perpendicular to the axis of the elongated handle. The Examiner appears to recognize this structure in Wai , since he states the issue stems from the failure of the original claims to state the structure

for providing the function. The amendments to the claims have obviated the issue by use of “pivoting means” and “flip means”. The use of a “pivot mechanism” is found at page 4, line 2 and the use of “pivoting means” is found at page 6, line 29. The specification describe how the filter “flips open” at page 8, line 1. Accordingly, it is respectfully submitted that the rejection under 35 U.S.C. 102(e) has been overcome.

**Rejection under 35 U.S.C. § 103(a):**

The Examiner has rejected claims 11 and 21 under 35 U.S.C. 103(a) as being unpatentable over Wai in view of Albertson. The Examiner states that, “Alberston disclosed that it is known in the art to provide a wear indicator (col. 3, lines 63 and 64) to inform the user as to when to replace a water filter in a coffee maker.” The Examiner concludes, “It would have been obvious to one skilled the art to provide the device of Wai with a filter wear indicator as taught by Albertson, in order to prevent overuse of the filter element.”

The claims have been amended to distinguish the prior art reference Wai, and claims 11 and 21 are dependent on the claims as amended. Alberston disclose the use of, “An indicator (not shown) can be incorporated with filter 20 to indicate when the filter should be changed.” The filter indicator in Applicants’ invention is a merged component of a beverage brewing system, as claimed in the amended claims. It is submitted that the use of such an indicator with the instant beverage brewing system is not obvious over the combination of Wai and Albertson. As noted above, Wai does not teach or render obvious the instant invention.

**Objection to Claims:**

Claim 19 is objected to as being dependent on a rejected base claim (claim 14). Claim 14 has been amended and claim 19 is now deemed to be in condition for allowance.

Claims 6 and 17 would be allowable if rewritten to overcome the rejections under 35 U.S.C. 112, 2nd paragraph. Claim 6 is dependent on claim 1 and claim 17 is dependent on claim 14. Claims 1 and 14 have been amended to obviate the Section 112 grounds for rejection.

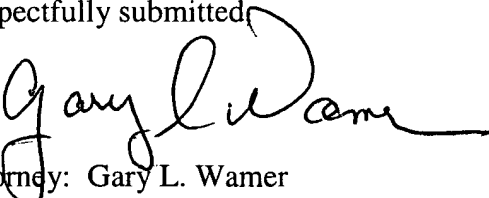
**Closing Remarks**

It is respectfully submitted that the claims as amended are now in condition for allowance. Reconsideration and issuance of a Notice of Allowance is respectfully requested.

Claims 25, 26 and 27 have been added to claim as independent claims the subject matter of dependent claims 6, 17 and 19 which have been indicated as allowable subject matter by the Examiner.

The under signed attorney can be reached at 203-799-9000, Ext. 277. Faxes may be sent to 203-799-7000. Emails can be sent to gwamer@kxindustries.com.

Respectfully submitted,

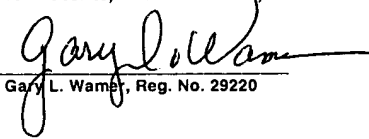


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I hereby certify that this correspondence is being deposited with the United States Postal Service on the date indicated below as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

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Amendment/Power/transmittal

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